

Office of the Governor

March 11, 2010

The Honorable John Hines
Senate President
State Capitol, Room 204
Cheyenne, WY 82002

The Honorable Colin Simpson
Speaker of the House
State Capitol, Room 204
Cheyenne, WY 82002

Re: House Enrolled Act No. 51

Dear President Hines and Speaker Simpson:

I have elected to sign HEA No. 51 being original House Bill No. 95. The bill is known as the Wyoming Firearms Freedom Act.

I write this letter to alert the public and legislators to several problems presented by this enactment; particularly problematic is the predicament of the holders of federal firearms licenses. Growing up in Wyoming I was a supporter of firearms before I learned about the Second Amendment. However, in reading this legislation, it is clear that it probably should have received greater consideration in drafting and content. This act is a notable illustration of well-intended legislation rushed through without appropriate consideration of potential unintended consequences.

At the outset it is important to understand this legislation is much more than a "symbolic act." It creates new crimes under state law, confuses the interpretation and application of state law and seems to imply that the State Legislature and not the United State Supreme Court is empowered to construe the reach of the U.S. Constitution.

This law adds more confusion into the already confusing landscape of who can and cannot possess a firearm in Wyoming, and what type of firearm he may possess. This confusion will apply to ordinary people, law enforcement, prohibited users and even the lawyers who try to interpret the differences. With this new law, when it comes to the possession of firearms by convicted felons and other prohibited users, Wyoming citizens will now have to consider two sets of state laws along with the federal firearm laws.

To illustrate this point, this new law allows Wyoming residents to possess or purchase a firearm free from federal regulation if all of its component parts were manufactured in this state. However, this law restricts persons from possessing a Wyoming made firearm if they happen to be a convicted felon, are currently adjudicated legally incompetent or have been previously committed to a mental institution. On the other hand, under existing state law, if a non-violent felon possesses a firearm manufactured outside of Wyoming he is not prohibited from possessing a firearm at all. But, these same people are prohibited under federal law unless the firearm happens to be black powder. To add to the complication, if the Wyoming manufactured firearm uses ammunition made outside of Wyoming, a felon or prohibited person will be subject to criminal prosecution under federal law. What's more, this new law has varying age restrictions depending on whether the firearm was a shotgun, firearm or rifle.

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Citizens will have to now figure out if they are a convicted felon, what kind of felony they have been convicted of, how old they were at the time of the possession, whether the firearm was a rifle, shotgun or handgun, whether the firearm they want to possess is black powder or cartridge, and whether it is made in Wyoming or elsewhere. To be sure, this is a confusing maze that will not serve Wyoming people well.

This legislation goes beyond a simple principled statement by criminalizing "any official, agent or employee of the United States" who tries to enforce a federal law involving a Wyoming firearm. Such an action would almost certainly be removed to federal court where persons charged under this new provision would be entitled to Supremacy Clause immunity. *See, e.g., State of Wyoming v. Livingston*, 443 F.3d 1211 (10th Cir. 2006).

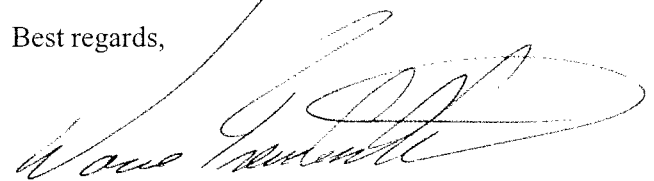
Moreover, this legislation contains various declaratory provisions regarding the overall constitutionality of the bill. It even cites the Declaration of Independence. I believe constitutional assertions are best left with the U.S. Supreme Court which has long been the "final expositor" of what the federal constitution means. As we all know, the U.S. Supreme Court's modern interstate commerce clause jurisprudence makes clear even matters of purely intrastate commerce can be regulated by the federal government when those local activities have a substantial effect on interstate commerce. While many of us do not agree with the historical expansion of the Interstate Commerce Clause, I do not think we should adopt conclusory statements of constitutionality in a bill that goes well beyond statements appropriately reserved for a declaratory resolution.

And beyond these constitutional questions are the inconsistent and confusing provisions of this bill. For instance, a federal firearms license (FFL) holder will be caught in a conflict between state law and federal law. This legislation directs the FFL licensees to not enforce federal firearms laws, while the federal law obligates them to enforce such laws.

I have attached a copy of a letter sent to all federal firearms licensees in the State of Tennessee following passage of similar legislation in that state. The letter is self-explanatory and reflects the unintended consequences for FFL holders in Wyoming.

I hope the Legislature will examine this legislation during this next year. Statements of principle are important but they are more functional if we avoid the unintended consequences.

Best regards,

A handwritten signature in black ink, appearing to read "Dave Freudenthal", written over a horizontal line.

Dave Freudenthal
Governor

DF:pjb
Enclosure

c: Members of the 60th Legislature
Max Maxfield, Secretary of State



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Assistant Director

Washington, DC 20226

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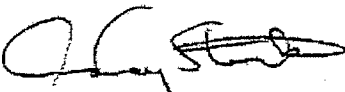
OPEN LETTER TO ALL TENNESSEE
FEDERAL FIREARMS LICENSEES

The purpose of this letter is to provide guidance on your obligations as a Federal firearms licensee ("FFL"). The Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") is dedicated to your success in meeting your requirements as a Federal firearms licensee. The following guidance is intended to assist you in accomplishing this goal.

The passage of the Tennessee Firearms Freedom Act, H.B. 1796, 106th Leg. (Term. 2009) 1796 ("Act"), effective June 19, 2009, has generated questions from industry members as to how this State law may affect them while engaged in a firearms business activity. The Act purports to exempt personal firearms, firearms accessories, and ammunition manufactured in the State, and which remain in the State, from most Federal firearms laws and regulations. However, because the Act conflicts with Federal firearms laws and regulations, Federal law supersedes the Act, and all provisions of the Gun Control Act and the National Firearms Act, and their corresponding regulations, continue to apply.

As you may know, Federal law requires a license to engage in the business of manufacturing firearms or ammunition, or to deal in firearms, even if the firearms or ammunition remain within the same state. All firearms manufactured by a licensee must be properly marked. Additionally, each licensee must record the type, model, caliber or gauge, and serial number of each firearm manufactured or otherwise acquired, and the date such manufacture or other acquisition was made. The information required must be recorded in the licensee's records not later than the seventh day following the date such manufacture or other acquisition was made. Firearms transaction records and NICS background checks must be conducted prior to disposition of firearms to unlicensed persons. These, as well as other Federal requirements and prohibitions, apply whether or not the firearms or ammunition have crossed state lines.

If you have any questions regarding the Federal firearms laws and regulations, please contact your local ATF office. ATF works closely with the firearms industry and appreciates the important role the industry plays in combating violent crime. A listing of ATF office phone numbers can be found at <http://www.atf.gov/contact/field.htm>.


Carson W. Carroll
Assistant Director
(Enforcement Programs and Services)